IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

CRP.No. 1022 of 2007()
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AS.63/2002 of SUB COURT,NEYYATTINKARA
OS.781/2000 of PRL.M.C.,NEYYATTINKARA
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REVN. PETITIONER: APPELLANT/Plaintiff
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YACOB NADAR BABY, KARTHIKAPALLI VEEDU,
MARUTHATHOOR, NEYYATTINKARA.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENTS: RESPONDENTS/Defendant:
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1. VIKRAMAN NAIR, S/O.SANKARA PILLAI,
MADATHIL PUTHEN VEEDU, MARUTHATHOOR DESOM,
NEYYATTINKARA VILLAGE.

2. SURESH, S/O.SANKARA PILLAI, -DO-, -DO-.

3. SETHUKUTTAN NAIR RAJENDRAN, DO. DO.

4. JANANSELVAM PICHI, THRITHO NIVAS,
KATTALIKONAM, MARUTHATHOOR DESOM, NEYYATTINKARA.

5. BENCHAMIN BABURAJ PRASAD, -DO-.

6. NESAN, SALVATION ARMY CHURCH,
MARUTHATHOOR DESOM, NEYYATTINKARA.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**M.N.Krishnan, J.**

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**C.R.P.No.1022 of 2007**

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**Dated this the 4th day of December, 2007.**

**ORDER**

This revision petition is preferred against the judgment of the Subordinate Judge, Neyyattinkara in A.S.No.63 of 2002. Suit is one for damages and it is the case of the plaintiff that he had taken an oral lease from Njanaselvam Pichi and her husband Baburaj Prasad on 5.11.1999 on a premium of Rs.2000/- and that he had planted 240 banana plants in the landed property. The first defendant purchased the property along with another 11 cents from the fourth defendant on 17.5.2000. It is the case of the plaintiff that the defendants had demanded surrender and thereafter had destroyed the plantation by cutting down bearing as well as non-bearing banana plants. He claimed a total compensation of Rs.25,000/-.

2. The first defendant filed a written statement denying the entire allegations and it is submitted that there has been no lease

in favour of the plaintiff from the fourth defendant or her husband, the fifth defendant. The contention is that the property has been purchased by the first defendant for valuable consideration and he is in possession and enjoyment of the property. The trial court on an appreciation of the evidence of PWs 1 to 3, DW1, Exts.A1 and A2 and Exts.B1 and C1, dismissed the case with compensatory cost of Rs.2,000/-. Against that decision an appeal was preferred and the Apex Court had confirmed the same.

3. I had gone through the judgment of both the courts below and the decision is based on appreciation of facts. Until and unless it is proved that it is perverse or illegal this Court sitting in revisional jurisdiction is not entitled to interfere with the finding of facts concurrently given by the courts below. Even then I had a glance through the judgment which will show that there is no evidence to show that there is lease in favour of the plaintiff from defendants 4 and 5. Unless the plaintiff is able to establish his right by virtue of a lease, he has no locus standi to institute a suit at all. Not only that person from whom he is alleged to have taken lease had been impleaded as defendants 4

and 5 in the suit and they have filed a written statement refuting the lease arrangement with the plaintiff. So far as the cutting and removal of trees is concerned, it is the case that 240 plantains had been cut and removed but the Commissioner's report would show that on the date of inspection by him there were 255 plantains in existence. The court also found that if young saplings sprouted out after the destruction, it is not possible for them to bear fruits after four months that too ripened fruits. So, a totality of appreciation of the evidence would show that the case put up by the plaintiff is not true. Further, the court below has also pointed out that the sixth defendant, namely, Nesan is projected as a witness to the dealings. But ultimately he entered on the party array as the sixth defendant and he also does not support the case of the plaintiff.

Therefore, I do not find any merit in the contention and hence, the Civil Revision Petition is dismissed.

M.N.Krishnan,
Judge.

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